REMARKS

Applicants have amended Claim 5 in view of the restriction requirement discussed below, as well as to include the preferred mixing ratios set forth in the specification at page 9.

In view of the recommendation made in the Office Action at page 4, Applicants have amended Claim 6 to indicate that the animal pests are insects, arachnids, and mites as described in the specification at page 24, lines 20-21. Applicants note in this respect that the term "animal pests" refers to pests that are animals, not to pests of animals.

Restriction Requirement under 35 U.S.C. 121

Restriction to one of the following groups was required:

Group I: Claims 5-7, drawn to a composition in which component (b) has a benzoylurea structure (i.e., triflumuron and flufenoxuron)

Group II: Claims 5-7, drawn to a composition in which component (b) has a diacylhydrazine structure (i.e., methoxyfenozide and tebufenozide)

Group III: Claims 5-7, drawn to a composition in which component (b) is thiacloprid, thiamethoxam, dinotefuran, or clothianidin

Group IV: Claims 5-7, drawn to a composition in which component (b) is deltamethrin

Group V: Claims 5-7, drawn to a composition in which component (b) has a phenylpyrazole structure (i.e., ethiprole and fipronil)

Group VI: Claims 5-7, drawn to a composition in which component (b) is indoxacarb

Group VII: Claims 5-7, drawn to a composition in which component (b) is a macrolide (emamectin-benzoate, abamectin, and spinosad)

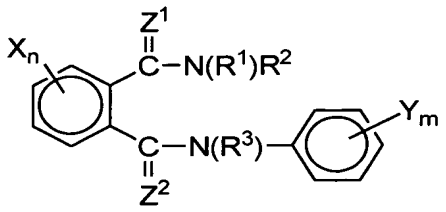
Applicants acknowledge their election of Group III without traverse made during a phone interview with the Examiner on January 19, 2006.

Rejection under 35U.S.C. 103

Claims 5-7 stand rejected under 35 U.S.C. 103(a) as being unpatentable over US 2004/ 0077500 ("Sakata et al") in view of acknowledged prior art and CABA abstracts 2002:76761, 2002:41456, and 1999:29730. Based on the Office Action at page 5, Applicants assume that the "acknowledged prior art" refers to an

acknowledgement that compounds of component (b) are insecticides. Applicants respectfully traverse.

Sakata et al discloses a host of insecticidal and acaricidal phthalimide derivatives of the formula



(where the various groups are defined over many pages), one of which is the compound of Applicants' formula (I). See paragraph [0006] through [0015] (pages 1-4) (general definitions), and compound 130 in Table 1 at page 7 (specifically). Sakata et al also discloses combinations of the disclosed compounds with other active ingredients (e.g., paragraph [0016] (page 4)), among which are compounds of Applicants' component (b) (see paragraphs [0029] through [0031] (pages 7-8)).

In view of the disclosure of such compounds, Applicants submit that even if the "acknowledged prior art" and the cited CABA abstracts are properly relied upon as identifying the compounds of Applicants' component (b) as insecticides, these secondary teachings add nothing that would lead those skilled in the art from Sakata et al to their claimed invention.

Sakata et al provides biological data for many compounds (including compound 130) and some combinations thereof (including some combinations of compound 130 with non-elected subject matter). As pointed out in the Office Action in the paragraph bridging pages 5-6, Sakata et al even discloses a combination of compound 130 with imidacloprid. However, Sakata et al does not describe or provide data for combinations of Applicants' compound (I) with thiacloprid, thiamethoxam, dinotefuran, or clothianidin or teach that the combinations claimed by Applicants would necessarily produce synergistic effects.

Applicants have found unexpectedly enhanced activities for all of the claimed combinations. The Office Action, however, challenges the sufficiency of Applicants' data to support their claims, particularly with respect to amounts, proportions, and species. Applicants submit that their data adequately support their narrowly defined invention. As will be discussed below, Applicants now submit a Declaration under 37 C.F.R. 1.132 of Dr. Wolfgang Thielert with additional supporting data.

First, Applicants' amended composition Claim 5 specifies the preferred ratios set forth in the specification at page 9. Second, Applicants' method Claim 6 additionally specifies an effective amount of the claimed compositions in a manner typical for claims of this type. Applicants submit that the selection of application rates and exposure times that would provide effective amounts of the active ingredients is well within the ability of those or ordinary skill in the art without requiring undue experimentation. As for the nature of the pests, Applicants have presented data based on routine screening tests showing that their claimed compositions are effective in all of the tests and submit – particularly in view of the extensive discussion of pesticidal activity in the specification – that those skilled in the art could reasonably expect these compositions to be effective against a broader array of agriculturally important animal pests. With respect to all of these points, Applicants emphasize that their claims are limited to combinations of the single compound of formula (I) with only four specific compounds at specified quantity ratios.

More specifically, Applicants have provided data in the specification and in the Declaration of Dr. Thielert. The specification, for example, provides test data for various compositions within the scope of the claims, including against *Aphis gossypii* (see Table A for compound (I) plus thiacloprid), *Myzus persicea* (see Table B for compound (I) plus thiacloprid, clothianidin, thiamethoxam, and dinotefuran), *Phaedon cochleariae* larvae (see Table C for compound (I) plus thiacloprid and thiamethoxam), *Plutella xylostella*, resistant strain (see Table D for compound (I) plus thiacloprid and thiamethoxam), and *Heliothis armigera* (see Table F for compound (I) plus clothianidin). In view of the criticism of the data shown in Table C at pages 6-7 of the Office Action, Applicants refer to the newly submitted Declaration of Dr. Thielert, which shows unexpectedly good activity for a combination of Applicants' compound (I) and thiacloprid when applied at a rate at which the individual components are completely ineffective (and that is lower than reported in Table C). Because of the consistently enhanced activity for all of the tested combinations using several standard test systems, particularly in view of the extensive discussion of pesticidal activity in the specification, Applicants can reasonably expect their results to be extendable to a broader group of agriculturally significant pests at application rates that those skilled in the art could readily determine without undue experimentation. Applicants therefore submit that their

claims are fully supported by the data they have presented in a manner consistent with *In re Kollman and Irwin*, 201 U.S.P.Q. 193, 199 (C.C.P.A. 1979) (cited with approval in support of *In re Clemens, Hurwitz, and Walker*, 206 U.S.P.Q. 289, 296 C.C.P.A. 1980).

In view of the narrow scope of their claims and the showings they have made, Applicants respectfully submit that their invention as now claimed is not rendered obvious by the teachings of Sakata et al, whether taken alone of in view of "acknowledged prior art" and the cited CABA abstracts.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

By _____
Richard E. L. Henderson
Attorney for Applicant(s)
Reg. No. 31,619

Bayer CropScience LP
100 Bayer Road
Pittsburgh, Pennsylvania 15205-9741
PHONE: (412) 777-3809
FACSIMILE PHONE NUMBER:
412-777-3902
s/rmc/relh/8492